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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Scott Huminski,

9 Plaintiff,

10 vs.

11 Hector Heretia, et al.

12 Defendants.

No. CV11-0896-PHX-DGC

13 **ORDER**

14 Plaintiff pro se Scott Huminski has filed a second motion for preliminary
15 injunction. Doc. 55. The motion is essentially the same as his first motion (Doc. 10),
16 which was denied by the Court on July 18, 2011. Doc. 42. For reasons that follow,
17 Plaintiff's second motion will be denied.

18 To obtain a TRO and a preliminary injunction Plaintiff must show that he is likely
19 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
20 preliminary relief, that the balance of equities tips in his favor, and that injunctive relief is
21 in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S.Ct. 365,
22 374 (2008). The test includes a sliding scale. If Plaintiff shows that the balance of
23 hardships will tip sharply in his favor, he need not make a strong showing of likelihood
24 of success on the merits – the existence of serious questions will suffice. *Alliance for*
25 *Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049-53 (9th Cir. 2010). Serious questions exist
26 when a plaintiff shows a “fair chance of success on the merits.” *Republic of the*
27 *Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc) (quoting *Nat'l*
28 *Wildlife Fed'n v. Coston*, 773 F.2d 1513, 1517 (9th Cir. 1985)).

1 One of the Defendants in this case, City of Surprise Police Officer Hector Heredia,
2 wrote Plaintiff an email on April 13, 2011, explaining that a Michael Nelson (whose
3 actual name apparently is Justin Nelson) had filed a harassment complaint against
4 Plaintiff and that Officer Heredia wanted to interview Plaintiff. The email explained
5 when Officer Heredia would be available, and said: "Please do not have any type of
6 contact with either Michael Nelson [sic] or Anthony Tsontakislav [sic] until I speak with
7 you and hear your side." Doc. 59-1 at 2.

8 Plaintiff's lawsuit is based on this email. Plaintiff asserts that Defendants have
9 "never withdrawn or attempted to narrowly-tailor the THREAT to be consistent with
10 First Amendment principles or the broader speech protections provided by the Arizona
11 Constitution." Doc. 55 at 2 (capitalization in original). Plaintiff contends that the email
12 constitutes a "police order restricting [Plaintiff's] access to Courthouses," and that
13 Defendants intend to enforce this threat "through the abuse of police power." *Id.*
14 Plaintiff seeks an injunction barring Defendants from enforcing the alleged order with
15 respect to Anthony Tsontakis (Nelson's lawyer), arguing that the order violates Plaintiff's
16 First Amendment rights and that Surprise has no jurisdiction over Mr. Tsontakis.

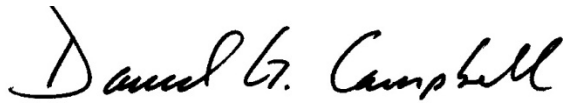
17 The Court again concludes that Plaintiff has failed to show irreparable harm or
18 that the balance of equities tips sharply in his favor. Defendants acknowledge in their
19 response that the email does not bar Plaintiff from being present in court or from having
20 contact with Mr. Tsontakis, and does not threaten any harm or injury if Plaintiff refuses
21 the request made in the email. Doc. 59. Plaintiff's evidence does not persuade the Court
22 otherwise. The email is a request that Plaintiff not have contact with Nelson and
23 Tsontakis until Officer Heredia interviews Plaintiff. Defendants have submitted evidence
24 that Officer Heredia, Lieutenant John Bacon, and Lieutenant Harold Brady all advised
25 Plaintiff that the email was not an order. Doc. 59-1. Moreover, given the nature of the
26 email, the Court cannot conclude that Plaintiff is likely to succeed on the merits or has
27 shown a fair chance of success.
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1 Plaintiff places considerable reliance on *Huminski v. Corsones*, 396 F.3d 53 (2d
2 Cir. 2005), a case concerning his protest actions in Vermont. The Court finds the case
3 distinguishable because Plaintiff was actually prohibited in that case from being present
4 at certain state courthouses.¹ It appears the email in this case is not an order and does not
5 prohibit Plaintiff from doing anything.

6 **IT IS ORDERED:**

- 7 1. Plaintiff's second motion for a preliminary injunction (Doc. 55) is **denied**.
8 2. Plaintiff's motion to expedite (Doc. 62) is **denied as moot**.

9 Dated this 18th day of October, 2011.

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13 David G. Campbell
14 United States District Judge
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21 ¹ The opening paragraph of the Second Circuit opinion provides this explanation:
22 "The plaintiff, Scott Huminski, is a long-time critic of the Vermont justice system who
23 has sought to disseminate his message using a wide variety of means and media. In 1997,
24 he became infuriated by what he thought to be his mistreatment by Vermont judges and
25 prosecutors in the course of criminal proceedings against him. He therefore began to
26 include angry denunciations of them in his public communications. He apparently
27 thought himself to be a legitimate gadfly-a quintessential example of what Justice White
28 once referred to as the 'lonely pamphleteer.' But Vermont judges and court personnel,
against the background of then-recent acts of terrorism and violence, interpreted his
behavior as a potential threat to personal safety, to court property, and to the orderly
conduct of court business. *Vermont officials therefore broadly prohibited Huminski's
presence in and around certain state courthouses.* Huminski complains that the
restrictions are unconstitutional." *Id.* at 58 (emphasis added; footnote omitted).